

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CATHOLIC CHARITIES CYO  
(SAN FRANCISCO), et al.,

Plaintiffs,

No. C 07-1307 PJH

v.

**ORDER**

MICHAEL CHERTOFF, Secretary,  
U.S. Department of Homeland  
Security, et al.,

Defendants.

Plaintiffs filed this proposed class action on March 6, 2007. On April 10, 2007, plaintiffs filed certificates of service, showing service of the summons and complaint on all defendants by certified mail on March 15, 2007. On April 18, 2007, plaintiffs filed a motion for class certification.

On May 3, 2007, defendants filed a request for additional time to file their opposition to the motion for class certification. Defendants, whose answer (not yet filed) is due 60 days after service of the summons and complaint, see Fed. R. Civ. P. 12(a)(3), have indicated that they intend to file a motion to dismiss no later than May 18, 2007. Plaintiffs filed no opposition to the request within the time allowed under the local rules. See Civil L.R. 7-11(b).

In view of the fact that defendants have not answered the complaint and seek to file a motion to dismiss in lieu of an answer, and in view of the fact that the court has not yet

1 held a case management conference in this case, the court finds the motion for class  
2 certification to be premature.

3 Rather than granting defendants' request for an extension of time to respond to the  
4 motion, the court prefers that plaintiffs withdraw the motion and refile it after the court has  
5 ruled on the motion to dismiss. If plaintiffs are unwilling to withdraw the motion, and fail to  
6 do so by May 16, 2007, the court will deny the motion without prejudice to refiling as  
7 indicated above.

8 The date for the hearing on plaintiffs' motion, previously set for Wednesday, May 23,  
9 2007, is VACATED.

10  
11 **IT IS SO ORDERED.**

12 Dated: May 9, 2007



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PHYLLIS J. HAMILTON  
United States District Judge